

Customs Bulletin

Regulations, Rulings, Decisions, and Notices
concerning Customs and related matters



and Decisions

of the United States Court of Customs and
Patent Appeals and the United States
Customs Court

Vol. 14

JANUARY 30, 1980

No. 5

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International Trade Commission Notice

THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decision

(T.D. 80-20)

Foreign Currencies—Daily Rates for Countries Not on Quarterly List

Rates of exchange based on rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York for the Brazil cruzeiro, People's Republic of China yuan, Hong Kong dollar, Iran rial, Philippines peso, Singapore dollar, Thailand baht (tical) and Venezuela bolivar

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to part 159, subpart C, Customs Regulations (19 CFR 159, subpart C).

Brazil cruzeiro:

December 24-31, 1979..... \$0.0235

People's Republic of China yuan:

December 24-28, 1979..... \$0.066335

December 31, 1979..... .666711

Hong Kong dollar:

December 24-26, 1979..... \$0.203046

December 27, 1979..... .202327

December 28, 1979..... .203459

December 31, 1979..... .202429

Iran rial:

December 24-31, 1979..... Not
available

Philippines peso:

December 24-31, 1979..... \$0.1350

Singapore dollar:

December 24-26, 1979	.....	\$0. 461148
December 27, 1979	.....	. 457247
December 28, 1979	.....	. 457457
December 31, 1979	.....	. 463392

Thailand baht (tical):

December 24-27, 1979	\$0. 0495
December 28-31, 1979 0487

Venezuela bolivar:

December 24-31, 1979	\$0. 2329
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(LIQ-3-TRODE)

Dated: January 8, 1980.

DANIEL D. SULLIVAN

(For G. Scott Shreve, Acting
Director, Duty Assessment Division.)

(T.D. 80-21)

Foreign Currencies—Variances From Quarterly Rate

Rates of exchange based upon rates certified to the Secretary of the Treasury by
the Federal Reserve Bank of New York

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in T.D. 79-264 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates:

Denmark krone:

December 24, 1979	.....	\$0. 186567
December 25, 1979	.....	Holiday
December 26, 1979	.....	. 186567
December 27, 1979	.....	(*)
December 28, 1979	.....	. 186515
December 31, 1979	.....	(*)

*Rate did not vary this date. Use quarterly rate.

Japan yen:

December 24, 1979	\$0. 004170
December 25, 1979	Holiday
December 26, 1979 .....	. 004183
December 27, 1979 .....	. 004170
December 28, 1979 .....	. 004157
December 31, 1979 .....	. 004161

(LIQ-3-TRODE)

Dated: January 8, 1980.

DANIEL D. SULLIVAN
(For G. Scott Shreve, Acting
Director, Duty Assessment Division).

(T.D. 80-22)

Changes in the Customs Field Organization; Section 101.3, Customs
Regulations, Amended

TITLE 19—CUSTOMS DUTIES

CHAPTER I—U.S. CUSTOMS SERVICE

PART 101—GENERAL PROVISIONS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document changes the field organization of the Customs Service by establishing a Customs port of entry at Owensboro, Ky., in the Cleveland, Ohio, Customs district (region IX). This change is needed to help alleviate the excessive workload in the Port of Louisville, Ky. (the only Customs port of entry in Kentucky), and to meet the expanding needs of the importing community in the Owensboro area. The rule is not considered to be significant.

EFFECTIVE DATE: (30 days from the date of publication in the Federal Register).

FOR FURTHER INFORMATION CONTACT: Richard C. Coleman, Office of Inspection, U.S. Customs Service, 1301 Constitution Avenue NW., Washington D.C. 20229; 202-566-8157.

SUPPLEMENTARY INFORMATION:

BACKGROUND

As part of a continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the public, Customs published a notice in the Federal Register on December 14, 1978 (43 F.R. 58383), proposing, among other changes, to establish a new combined port of entry of Owensboro-Paducah, Ky. (region IX).

Interested parties were given until February 12, 1979, to submit comments regarding this proposed change. No comments were received. After review of the proposal, it was determined that to expedite the extensions of the existing Customs ports of entry, it would be advisable to separate the proposal to establish the new combined port of entry of Owensboro-Paducah from the other proposed changes. Accordingly, a separate document implementing the other changes referred to in the December 14, 1978, notice was published as T.D. 79-169 in the Federal Register on June 15, 1979 (44 F.R. 34478).

Following further review, Customs has determined that, because of the distance between Owensboro and Paducah, it would be in the interest of governmental economy to modify the proposal to establish the combined port of entry to establish only a single Customs port of entry at Owensboro. No further changes relating to Customs services at Paducah are contemplated at this time. Notice of any subsequent action affecting Paducah will be the subject of another document published in the Federal Register.

CHANGE IN THE CUSTOMS FIELD ORGANIZATION

Under the authority vested in the President by section 1 of the act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by Executive Order No. 10289, September 17, 1951 (3 CFR 1949-1953 comp., ch. II), and pursuant to authority provided by Treasury Department Order No. 101-5 (43 F.R. 31057), Owensboro, Ky., is designated as a Customs port of entry in the Cleveland, Ohio, Customs district (region IX). The geographical boundaries of the Owensboro, Ky., port of entry include all of the territory located within the corporate limits of the city of Owensboro, in the State of Kentucky.

AMENDMENT TO THE REGULATIONS

To reflect this change, the list of Customs regions, districts, and ports of entry in the Cleveland, Ohio, Customs district (region IX) in section 101.3(b), Customs Regulations (19 CFR 101.3(b)), is amended by inserting "Owensboro, Ky., including the territory

described in T.D. 80-22." directly below "Louisville, Ky., * * *" in the column headed "Ports of entry."

INAPPLICABILITY OF EXECUTIVE ORDER 12044

This document is not subject to the Treasury Department directive (43 F.R. 52120) implementing Executive Order 12044, "Improving Government Regulations," because the regulation was in process before May 22, 1978, the effective date of the directive.

DRAFTING INFORMATION

The principal author of this document was Lawrence P. Dunham, Regulations and Research Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Dated: December 17, 1979.

RICHARD J. DAVIS,

Assistant Secretary of the Treasury.

[Published in the Federal Register, Jan. 18, 1980 (45 F.R. 3573)]

(T.D. 80-23)

Synopses of Drawback Decisions

The following are synopses of drawback rates and amendments issued September 14, 1979, to December 11, 1979, inclusive, pursuant to section 22.1 and 22.5, inclusive, Customs Regulations.

In the synopses below are listed for each drawback rate or amendment approved under section 1313(a), the same of the company, the specified articles on which drawback is authorized, the merchandise which will be used to manufacture or produce these articles, the factories where the work will be accomplished, the date the statement was signed, the basis for determining payment, the Regional Commissioner who issued the rate, and the date on which it was signed.

(DRA-1-09)

Dated: January 10, 1980.

DONALD W. LEWIS;

Director, Office of Regulations and Rulings.

(A) Company: American LaFrance.

Articles: Stainless-steel water tanks for firetrucks,

Merchandise: Imported stainless-steel sheets.

Factory: Elmira, N.Y.

Statement signed: October 30, 1979.

Basis of claim: Appearing in.

Rate issued by Regional Commissioner of Customs: Baltimore,
November 13, 1979.

(B) Company: American Seating Co.

Articles: Bus seats.

Merchandise: Imported fabric of various colors.

Factory: Grand Rapids, Mich.

Statement signed: September 28, 1979.

Basis of claim: Appearing in.

Rate issued by Regional Commissioner of Customs: New York
November 29, 1979.

(C) Company: Ampacet Corp.

Articles: Plastic color concentrates in pellet form.

Merchandise: Imported organic pigments.

Factories: Mount Vernon, N.Y.; Terre Haute, Ind.; DeRidder, La.

Statement signed: October 23, 1979.

Basis of claim: Used in.

Rate issued by Regional Commissioner of Customs: New York,
November 2, 1979.

(D) Company: Biocon (U.S.) Inc.

Articles: Flavorings.

Merchandise: Imported enzymes and enzyme concentrates.

Factory: Lexington, Ky.

Statement signed: October 4, 1979.

Basis of claim: Used in.

Rate issued by Regional Commissioner of Customs: New York,
December 3, 1979.

(E) Company: Bleim Steel Co.

Articles: Steel sheets, strips, and blanks.

Merchandise: Imported hot-rolled, cold-rolled, galvanized, and aluminized steel sheet.

Factory: Toledo, Ohio.

Statement signed: August 13, 1979.

Basis of claim: Appearing in.

Rate issued by Regional Commissioner of Customs: New York,
October 15, 1979.

(F) Company: Cadillac Gage Co.

Articles: Armored cars, turrets, and armored cars with turrets.

Merchandise: Imported engines, tires, turrets weldments, and other component parts.

Factory: Cocoa, Fla.

Statement signed: September 10, 1979.

Basis of claim: Used in.

Rate issued by Regional Commissioner of Customs: Chicago, October 3, 1979.

Revokes: T.D. 55007-F, as amended by T.D. 67-202-C.

(G) Company: Chrysler Corp.

Articles: Passenger cars, trucks, parts, and assemblies thereof.

Merchandise: Imported engines, transmissions, radios, air-conditioners, heaters, tires, batteries, other vehicle parts, both finished and unfinished, and vehicle assemblies.

Factories: Various factories as set forth in manufacturer's statement.

Statement signed: July 20, 1979.

Basis of claim: Used in, less-valuable waste as to castings; Used in, remainder of imported merchandise.

Rate issued by Regional Commissioner of Customs: Chicago, September 14, 1979.

Revokes: T.D. 52282-M; T.D. 55088-H, as amended by 55634-A; 56514-E, and 67-66-0; T.D. 54395-A, as amended by 54446-A; 55035-B, 55844-P, and 56549-B; T.D. 47069-A, as amended by 47949-D, 48338-A, 49847-B, 50781-B, 51523-C, 51586-A, and 51753-A.

(H) Company: Contempra Industries, Inc.

Articles: CSA-approved electric barbecue grills.

Merchandise: Imported CSA-approved cordsets, item No. 03297.

Factory: Asbury Park, N.J.

Statement signed: October 23, 1979.

Basis of claim: Appearing in.

Rate issued by Regional Commissioner of Customs: New York, November 13, 1979.

(I) Company: Cummins Mid-States, Inc.

Articles: Diesel generator sets/systems and diesel power units.

Merchandise: Imported and/or drawback diesel engines.

Factory: Indianapolis, Ind.

Statement signed: September 18, 1979.

Basis of claim: Used in.

Rate issued by Regional Commissioner of Customs: Chicago, November 8, 1979.

(J) Company: E. I. du Pont de Nemours & Co.

Articles: Dyes—Sevron yellow R and sevron yellow R concentrated 200 percent.

Merchandise: Imported 2:4 demethoxy aniline.

Factories: Deepwater, N.J.; Manati, P.R.

Statement signed: October 4, 1979.

Basis of claim: Appearing in.

Amendment issued by Regional Commissioner of Customs: Baltimore, November 28, 1979.

Amends: T.D. 55755-A, as amended, to cover sevron yellow R concentrated 200 percent and additional factory at Manati, P.R.

(K) Company: FSI Corp.

Articles: Pressure vessels and acid process systems.

Merchandise: Imported PFA pressure vessel liners and PFA Teflon bowl liners.

Factory: Chaska, Minn.

Statement signed: October 25, 1979.

Basis of claim: Used in.

Rate issued by Regional Commissioner of Customs: Chicago, November 16, 1979.

Revokes: T.D. 79-268-E.

(L) Company: Fannon Metal Industries, Inc.

Articles: Photocopier assemblies.

Merchandise: Imported ceramic ferrite magnets.

Factory: Rochester, N.Y.

Statement signed: September 27, 1979.

Basis of claim: Appearing in.

Rate issued by Regional Commissioner of Customs: New York; November 29, 1979.

(M) Company: Foster Leather Co., Inc.

Articles: Pigment-colored and surface-textured leather.

Merchandise: Imported leather hides.

Factory: Salem, Mass.

Statement signed: September 18, 1979.

Basis of claim: Appearing in.

Rate issued by Regional Commissioner of Customs: New York; October 30, 1979.

(N) Company: Hoffmann-La Roche Inc.

Articles: Thiamine hydrochloride and thiamine mononitrate.

Merchandise: Imported thiothiamine.

Factory: Nutley, N.J.

Statement signed: November 9, 1979.

Basis of claim: Used in.

Rate issued by Regional Commissioner of Customs: New York;
November 29, 1979.

(O) Company: Honeywell, Inc.

Articles: Visitronic auto/focus modules for cameras.

Merchandise: Imported integrated circuit subassemblies.

Factory: Denver, Colo.

Statement signed: July 19, 1979.

Basis of claim: Appearing in.

Rate issued by Regional Commissioner of Customs: Chicago, Sep-
tember 17, 1979.

(P) Company: Intoximeters, Inc.

Articles: Alco-sensors.

Merchandise: Imported fuel cells.

Factory: St. Louis, Mo.

Statement signed: September 12, 1979.

Basis of claim: Used in.

Rate issued by Regional Commissioner of Customs: Chicago;
October 3, 1979.

(Q) Company: Koehring Co.

Articles: Cranes, excavators, compactors, and stabilizers, and light
construction equipment.

Merchandise: Imported gasoline and diesel engines, hydraulic motors,
compactor machine parts, unfinished compactor machines, and
crawler component parts.

Factories: Waverly, Iowa; Dayton and Springfield, Ohio; Chatta-
nooga, Tenn. (2); Milwaukee and Port Washington, Wis.

Statement signed: August 20, 1979.

Basis of claim: Appearing in.

Rate issued by Regional Commissioner of Customs: Chicago, Novem-
ber 30, 1979.

Revokes: T.D. 79-268-N.

(R) Company: Marathon LeTourneau Co.

Articles: L-800 Letro loaders.

Merchandise: Imported Cummins diesel engines.

Factory: Longview, Tex.

Statement signed: November 16, 1979.

Basis of claim: Used in.

Rate issued by Regional Commissioner of Customs: Houston; December 11, 1979.

(S) Company: Merck & Co., Inc., Merck Chemical Manufacturing Division.

Articles: Ami-carbinol, amitriptyline, cypro carbinol, and cypro heptadine.

Merchandise: Imported phenylacetic acid and benzalpthaline.

Factory: Rahway, N.J.

Statement signed: October 1, 1979.

Basis of claim: Used in.

Rate issued by Regional Commissioner of Customs: New York, October 11, 1979.

Revokes: T.D. 72-116-C.

(T) Company: Middlesex Chemicals, Inc.

Articles: Fused, metallurgical-grade vanadium pentoxide powder.

Merchandise: Imported, fused, metallurgical-grade vanadium pentoxide flake.

Factory: Raritan, N.J.

Statement signed: October 19, 1979.

Basis of claim: Used in.

Rate issued by Regional Commissioner of Customs: New York, December 5, 1979.

(U) Company: The O'Brien Machinery Co.

Articles: Power-generating equipment (diesel and gas generator sets).

Merchandise: Imported gas and diesel engines; electrical generators; generator set control panels.

Factory: Downingtown, Pa.

Statement signed: November 15, 1979.

Basis of claim: Used in.

Rate issued by Regional Commissioner of Customs: Baltimore, December 4, 1979.

(V) Company: Panam Silk Mills, Inc.

Articles: Silk piece goods.

Merchandise: Imported silk yarn, thrown silk yarn, and/or Dupioni silk yarn, wound raw silk.

Factory: Wilkes-Barre, Pa.

Statement signed: October 25, 1979.

Basis of claim: Appearing in.

Rate issued by Regional Commissioner of Customs: New York,
November 29, 1979.

(W) Company: Plessey Materials Corp., d.b.a. Plessey Electro-Products.

Articles: Electronic cow feeders.

Merchandise: Imported dials and potentiometers.

Factory: Los Angeles, Calif.

Statement signed: September 20, 1979.

Basis of claim: Appearing in.

Rate issued by Regional Commissioner of Customs: Los Angeles,
October 11, 1979.

(X) Company: Thomas Industries, Inc., Power Air Division.

Articles: Portable paint sprayers.

Merchandise: Imported electrical cords and rubber bumpers.

Factories: Sheboygan, Wis. (2).

Statement signed: October 30, 1979.

Basis of claim: Appearing in.

Rate issued by Regional Commissioner of Customs: Chicago, No-
vember 16, 1979.

(Y) Company: Walter Motor Truck Co.

Articles: Positive-traction, aircraft crash, fire rescue vehicles.

Merchandise: Diesel engines, water foam tanks.

Factory: Voorheesville, N.Y.

Statement signed: October 4, 1979.

Basis of claim: Appearing in.

Rate issued by Regional Commissioner of Customs: New York,
October 15, 1979.

(Z) Company: Westinghouse Electric Corp., Power Systems Co.

Articles: Steam turbine blades.

Merchandise: Imported, stainless-steel, turbine blade forgings.

Factories: Winston-Salem and Charlotte, N.C.; Lester, Pa.

Statement signed: November 15, 1979.

Basis of claim: Used in, less-valuable waste.

Rate issued by Regional Commissioner of Customs: New York,
November 27, 1979.

(T.D. 80-24)

Bonds

Approval and discontinuance of carrier bonds, Customs form 3587

Bonds of carriers for the transportation of bonded merchandise have been approved or discontinued as shown below. The symbol "D" indicates that the bond previously outstanding has been discontinued on the month, day, and year represented by the figures which follow. "PB" refers to a previous bond, dated as represented by figures in parentheses immediately following, which has been discontinued. If the previous bond was in the name of a different company or if the surety was different, the information is shown in a footnote at the end of the list.

Dated: January 10, 1980.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
ATSL, Inc., Building A, 10 Oregon Ave., Philadelphia, PA; motor carrier; Peerless Ins. Co. D 11/27/79	June 13, 1978	Aug. 15, 1978	Philadelphia, PA; \$50,000
All Freight Transportation Co., Inc., 24 East Runyon St., Newark, NJ; motor carrier; St. Paul Fire & Marine Ins. Co.	Nov. 30, 1979	Nov. 30, 1979	Newark, NJ; \$50,000
Atlantic Pipe Line Co., 200 S. Broad St., Philadelphia, PA; pipe line; Federal Ins. Co. D 10/15/79	Dec. 16, 1969	Jan. 22, 1970	Philadelphia, PA; \$50,000
Brooks Transportation Inc., 3830 Kelley Ave., Cleveland, OH; motor carrier; Insurance Co. of North America (PB 12/26/78) D 12/27/79 ¹	Dec. 26, 1979	Dec. 27, 1979	Cleveland, OH; \$50,000
C. H. Dredge & Co., Inc., (A UT Corp) 918 South 2000 West, Syracuse, UT; motor carrier; American Manufacturers Mutual Ins. Co.	Oct. 30, 1979	Dec. 12, 1979	San Francisco, CA; \$25,000
Chesapeake Motor Lines, Inc., RFD #4, Box 231, Baltimore, MD; motor carrier; Fidelity & Deposit Co. of MD D 10/10/79	Apr. 6, 1968	Apr. 10, 1968	Baltimore, MD; \$25,000
Chestnut Ridge Railway Co., Palmerton, PA; rail carrier; Fireman's Insurance Co. (PB 7/17/77) D 7/17/79 ²	July 16, 1979	July 17, 1979	Philadelphia, PA; \$50,000
L. G. DeWitt, Inc. (Florida), Pompano Beach, FL; motor carrier; The Home Indemnity Co. D 12/20/79	Nov. 28, 1969	July 1, 1970	Wilmington, NC; \$25,000

See footnotes at end of table.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Export Import Service Co., Inc., 28065 Beverly Rd., Romulus, MI; freight forwarder; St. Paul Fire & Marine Ins. Co.	Nov. 1, 1979	Nov. 16, 1979	Detroit, MI; \$50,000
Farruggio's Bristol and Phila. Auto Express, Inc., 1419 Radcliffe St., Bristol, PA; motor carrier; Reliance Ins. Co.	Oct. 5, 1979	Nov. 26, 1979	Philadelphia, PA; \$50,000
Freight Consolidation Services, Inc., and Riteway Motor Freight Co., 2932 W. 79th St., Chicago, IL; motor carrier; Hartford Accident & Indemnity Co. D 12/13/79	Mar. 1, 1976	June 1, 1976	Chicago, IL; \$35,000
Haulmark Transfer, Inc., P.O. Box 343, Cockeysville, MD; motor carrier; St. Paul Fire & Marine Ins. Co. D 2/4/79	Jan. 1, 1978	Jan. 30, 1978	Baltimore, MD; \$50,000
Inman Freight System Inc., 321 N. Spring Ave., Cape Girardeau, MO; motor carrier; Reliance Ins. Co.	Dec. 11, 1979	Dec. 11, 1979	St. Louis, MO; \$50,000
Marino Bros. Trucking Co., 3516 Newton Rd., Stockton, CA; motor carrier; Fidelity & Deposit Co. (PB 4/18/77) D 12/26/79 ²	Apr. 18, 1979	Dec. 26, 1979	San Francisco, CA; \$50,000
Masselink Brothers Trucking, 901 Freeman S.W., Grand Rapids, MI; motor carrier; St. Paul Fire & Marine Ins. Co.	Nov. 6, 1979	Nov. 9, 1979	Detroit, MI; \$50,000
Norfolk Shipbuilding & Drydock Corp., Foot of Liberty St., Norfolk, VA; motor carrier; Fidelity and Deposit Co.	Dec. 3, 1979	Dec. 18, 1979	Norfolk, VA; \$25,000
Republic Van & Storage Co., Inc., P.O. Box 8615, Baltimore, MD; motor carrier; Insurance Co. of North America D 10/15/79	Nov. 3, 1975	Dec. 10, 1975	Baltimore, MD; \$25,000
Service Transportation Co., 250 State Highway #3, Seaucus, NJ; motor carrier; The Home Indemnity Co. D 12/19/79	Aug. 12, 1975	Aug. 23, 1975	New York Seaport; \$25,000
Stevens Line Co., P.O. Box #56, Yonge's Island, SC; water carrier; Insurance Company of North America	Aug. 20, 1979	Nov. 14, 1979	Charleston, SC; \$50,000
Superior Transfer, Inc., 2669 Merchants Dr., Baltimore, MD; motor carrier; St. Paul Fire & Marine Ins. Co.	Dec. 7, 1979	Dec. 7, 1979	Baltimore, MD; \$25,000
Trus Transport, Inc., 508 S. Airport Blvd., South San Francisco, CA; motor carrier; Peerless Ins. Co. (PB 10/14/77) D 11/24/79 ⁴	Oct. 30, 1979	Dec. 19, 1979	San Francisco, CA; \$25,000

. See footnotes at end of table.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Webb's Transfer, Inc., County & Johnson Streets, Suffolk, VA; motor carrier; Selected Risks Insurance Co. (PB 7/25/77) D 1/2/80 *	Nov. 30, 1979	Jan. 2, 1980	Norfolk, VA; \$25,000

* Surety is Travelers Indemnity Co.

* Surety is St. Paul Fire & Marine Ins. Co.

* Surety is Hartford Accident & Indemnity Co.

* Surety is Insurance Co. of North America

* Surety is Fidelity & Deposit Co. of MD

BON-3-03

DONALD W. LEWIS,
Director, Office of Regulations and Rulings.

(T.D. 80-25)

Fees for Vessel Services—Schedule of Navigation Fees, Section 4.98(a),
Customs Regulations, Amended

TITLE 19—CUSTOMS DUTIES

CHAPTER I—U.S. CUSTOMS SERVICE

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: Recent legislation repealed several statutes under which Customs charged and collected fees for specific services provided to vessels by Customs officers. This legislation authorized the Secretary of the Treasury to establish a new schedule of fees to return to the Government the approximate costs of the services provided. This document (1) establishes a new fee schedule to be used for the remainder of 1980, and (2) amends the Customs Regulations to provide that a revised fee schedule will be published in December 1980, to be used by Customs in charging and collecting fees for services provided to vessels in 1981, and that a new fee schedule will be published in December of each year thereafter for services to be provided during the following year.

EFFECTIVE DATE: (30 days from the date of publication in the Federal Register).

FOR FURTHER INFORMATION CONTACT: Jerry Laderberg, Carriers, Drawback, and Bonds Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229; 202-566-5706.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Public Law 95-410, the "Customs Procedural Reform and Simplification Act of 1978," approved October 3, 1978 (the act), repealed sections 2654, 4381, 4382, and 4383 of the Revised Statutes of the United States (19 U.S.C. 58; 46 U.S.C. 329, 330, and 333), the statutory authority under which Customs has been charging and collecting fees for specific services provided to vessels by Customs officers. These fees, designated as "Navigation Fees" in section 4.98(a), Customs Regulations (19 CFR 4.98(a)), were as follows:

Fee No. and description of services	A	B
1 Entry of vessel, including American, from foreign port (19 U.S.C. 58):		
(a) Less than 100 net tons.....	\$1.50	-----
(b) 100 net tons and over.....	2.50	-----
2 Clearance of vessel, including American, to foreign port (19 U.S.C. 58):		
(a) Less than 100 net tons.....	1.50	-----
(b) 100 net tons and over.....	2.50	-----
3 Issuing permit to foreign vessel to proceed from district to district, and receiving manifest (46 U.S.C. 329, 330).....	2.00	\$0.10
4 Receiving manifest of foreign vessel on arrival from another district, and granting a permit to unlade (46 U.S.C. 329, 330).....	2.00	.10
5 Receiving post entry (19 U.S.C. 58, 46 U.S.C. 330).....	2.00	2.00
6 Receiving official bond not otherwise provided for (19 U.S.C. 58).....	.40	-----
7 Certifying payment of tonnage tax for foreign vessels only (19 U.S.C. 58)....	.20	.20
8 Furnishing copy of official document, including certified outward foreign manifest, and others not elsewhere enumerated (19 U.S.C. 58).....	.20	.20

The fees in column A were those collectible on the Atlantic, Gulf, and Pacific coasts and on the Mississippi River and tributaries; those in column B were collectible on the northern, northeastern, and northwestern frontiers (Great Lakes, Lake Champlain, and St. Lawrence River).

Because these fees did not cover the costs of providing the services, section 214 of the act authorized the Secretary of the Treasury to establish a new schedule of fees to be charged and collected for furnishing these services. These fees are to be consistent with section 501 of the Independent Offices Appropriation Act, 1952 (31 U.S.C. 483a), the so-called user charges statute, which provides that the costs of specific services for private interests shall be reimbursed to the Government.

Interim action was required so that fees could be charged and collected for the services provided, pending the preparation and publication of a new fee schedule. In this regard, on October 12, 1978, Customs published a general notice in the Federal Register (T.D. 78-381; 43 F.R. 46962), which provided that until a new fee

schedule becomes effective, Customs would continue to charge and collect the fees presently set forth in section 4.98(a), Customs Regulations (19 CFR 4.98(a)), for services provided to vessels by Customs officers.

PROPOSED RULE

In accordance with section 214 of the act, on May 25, 1979, a notice of proposed rulemaking was published in the Federal Register (44 F.R. 30375).

1. The notice proposed a new schedule of fees which would become effective upon publication in the Federal Register as a Treasury decision and remain in effect for the remainder of calendar year 1979.

2. The notice also proposed to amend section 4.98(a), Customs Regulations (19 CFR 4.98(a)), by deleting the existing fee schedule and providing that a general notice will be published in the Federal Register and CUSTOMS BULLETIN in December 1979, setting forth a revised schedule of fees for specific services provided to vessels by Customs officers in 1980, and that a new schedule will be published in December of each year thereafter for services provided during the following year to reflect changes in the rate of compensation paid to the Customs officer performing the service. The revised fee schedule would be based upon the amount of time the average service requires of a Customs officer in the fifth step of GS-9.

The notice also set out (1) the amount of revenue raised in fiscal year 1978 for each service, (2) the estimated length of time in hours reflected in the proposed new fee schedule required by a Customs officer to accomplish each service, and (3) the proposed new schedule of fees, as follows:

Fee No. and description of services	Amount collected 1978	Estimated time in hours	Proposed new fee
1 Entry of vessel, including American, from foreign port:			
(a) Less than 100 net tons.....	\$269,151	½	\$5.90
(b) 100 net tons and over.....	(a) and (b)	1	11.90
2 Clearance of vessel, including American, to foreign port:			
(a) Less than 100 net tons.....	262,570	½	5.90
(b) 100 net tons and over.....	(a) and (b)	1	11.90
3 Issuing permit to foreign vessel to proceed from district to district, and receiving manifest.....	115,598	1	11.90
4 Receiving manifest of foreign vessel on arrival from another district, and granting a permit to unlade.....	109,091	1	11.90
5 Receiving post entry.....	81,410	½	5.90
6 Receiving official bond not otherwise provided for.....	388	¼	3.00
7 Certifying payment of tonnage tax for foreign vessels only.....	27,201	¼	3.00
8 Furnishing copy of official document, including certified outward foreign manifest, and others not elsewhere enumerated.....	3,710	1	11.90
Total.....	869,119		

EXPLANATION

Section 24.17(d), Customs Regulations (19 CFR 24.17(d)), provides that the reimbursable charge for regular compensation shall be computed in accordance with section 19.5(b), Customs Regulations (19 CFR 19.5(b)), which contains the computation of the rate per hour for regular pay. The charge shall be computed at a rate per hour equal to 137 percent of the hourly rate of regular pay of the particular employee, with an addition equal to any night pay differential actually payable under section 5545, title 5, United States Code. The ratio of the annual number of working hours charged to Customs appropriation to the net number of annual working days is 137 percent. Therefore, the hourly rate proposed to be utilized was \$11.88, which was 137 percent of the hourly rate of pay of a Customs officer in the fifth step of GS-9.

It is indicated in the legislative history of Public Law 95-410 (H.Rept. No. 95-621, 95th Cong., 2d sess., 1978, p. 28), that the fees to be charged shall be based upon the amount of time the average service requires of a Customs officer in the third step of GS-11. However, Customs has determined that these services generally are provided by a Customs officer in the fifth step of GS-9 and will use this pay rate as the basis for calculating the fees.

The proposed fees were rounded off to the nearest tenth of a dollar. It also was proposed to eliminate the fees under column "B" in the present schedule. Fees under column "B" were collectible on the northern, northeastern, and northwestern frontiers (Great Lakes, Lake Champlain, and St. Lawrence River). Because Congress has repealed sections 329, 330, and 333 of title 46, and section 58, title 19, United States Code, and because the amount of the fee to be charged and collected is to be based on the amount of time required to provide the service and not on when or where the service is performed, Customs has determined that there was no reason to continue the distinction between column "A" and column "B" fees. The explanatory material presently set forth in paragraphs 4.98(b) through 4.98(h), Customs Regulations, remains unchanged, except where noted below under "Other changes."

Interested parties were given until June 25, 1979, to submit relevant data, views, or arguments regarding the proposals.

DISCUSSION OF COMMENTS

One commenter believes that the estimated periods of time required to accomplish some of the services are excessive, thereby inflating the fees. He suggests that the estimated periods of time required to perform several of the services be reduced.

Customs has reviewed the estimated periods of time reflected in the proposed new fee schedule as required to accomplish each service and determined that, based upon work measurement studies, these periods are accurate and represent the average length of time in hours for each designated service throughout all Customs regions.

The second commenter notes that the act authorized the Secretary of the Treasury to establish a new schedule of fees to return to the Government the approximate cost of each service rendered. However, the commenter objects to paying two charges when the service is performed on a reimbursable overtime basis. He states that in a reimbursable overtime situation, he would be required to pay the applicable charge specified in the proposed fee schedule, which now would be based upon the actual cost of the service rather than a flat statutory fee, as well as the reimbursable overtime compensation for the Customs officer performing the service.

Customs believes this comment has merit. Accordingly, a sentence has been added to proposed section 4.98(a) to provide that when a particular vessel service is performed for which reimburseable overtime compensation is applicable, the party requesting the service would pay only the applicable overtime charge, and not both the overtime charge and the fee specified in the fee schedule.

This same commenter believes that the new fee schedule, although supported by legislative authority, is discriminatory against vessels because no similar overtime reimbursable compensation fees are applicable to air commerce.

Under title 49, United States Code, section 1509(c), as amended, the "Secretary of the Treasury is authorized by regulations to provide for the application to civil aircraft of the laws and regulations relating to the entry and clearance of vessels * * *." The Secretary has not exercised this authority in connection with the schedule of navigation fees in section 4.98, Customs Regulations. It is Customs opinion that although the Secretary has not elected to exercise this authority with respect to aircraft, he is not precluded from exercising similar authority relating to vessels. Customs does, however, intend to review again whether appropriate charges should be levied for services provided to aircraft.

OTHER CHANGES

Upon its own review, Customs has made an additional change in the proposed amendment:

The new fee schedule published in this document is effective 30 days after the date of its publication in the Federal Register and shall remain in effect for the remainder of 1980. Proposed section 4.98(a) therefore is amended to provide that a revised fee schedule will be

published in December 1980 (rather than 1979), to be used to charge and collect fees for services to be provided in 1981 (rather than 1980).

ACTION

After consideration of the comments received, and upon Customs own review, it has been decided to: (1) Adopt the fee schedule as proposed, with the changes set forth in this document:

Fee No.	Description of services	Fee
1	Entry of vessel, including American, from foreign port:	
	(a) Less than 100 net tons.....	\$6.40
	(b) 100 net tons and over.....	12.70
2	Clearance of vessel, including American, to foreign port:	
	(a) Less than 100 net tons.....	6.40
	(b) 100 net tons and over.....	12.70
3	Issuing permit to foreign vessel to proceed from district to district, and receiving manifest.	12.70
4	Receiving manifest of foreign vessel on arrival from another district, and granting a permit to unlade.....	12.70
5	Receiving post entry.....	6.40
6	Receiving official bond not otherwise provided for.....	3.20
7	Certifying payment of tonnage tax for foreign vessels only.....	3.20
8	Furnishing copy of official document, including certified outward foreign manifest, and others not elsewhere enumerated.....	12.70

This fee schedule is effective 30 days after publication in the Federal Register and shall remain in effect for the remainder of 1980.

The fees are calculated on the basis that the vessel services are provided by a Customs officer in the fifth step of GS-9. The hourly rate utilized is \$12.72, thereby reflecting the change in the rate of compensation paid to a Customs officer of that grade performing the services effective October 7, 1979; and

(2) Amend section 4.98, Customs Regulations, as proposed with, the changes set forth in this document.

INAPPLICABILITY OF EXECUTIVE ORDER 12044

This document is not subject to the provisions of the Treasury Department directive (43 F.R. 52120) implementing Executive Order 12044, "Improving Government Regulations," because the subject matter was in process before May 22, 1978, the effective date of the directive.

DRAFTING INFORMATION

The principal author of this document was Charles D. Ressin, Regulations and Research Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

AMENDMENT TO THE REGULATIONS

Section 4.98, Customs Regulations (19 CFR 4.98), is amended as set forth below.

WILLIAM T. ARCHEY,
Acting Commissioner of Customs.

Approved: December 31, 1979.

RICHARD J. DAVIS,
Assistant Secretary of the Treasury.

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

Section 4.98(a), Customs Regulations (19 CFR 4.98(a)), is amended to read as follows:

§ 4.98 Navigation fees.

(a)(1) The Customs Service shall publish a general notice in the Federal Register and CUSTOMS BULLETIN in December of each year, beginning in December 1980, setting forth a revised schedule of navigation fees for the following services:

Fee No. and description of services

- 1 Entry of vessel, including American, from foreign port:
 - (a) Less than 100 net tons.
 - (b) 100 net tons and over.
- 2 Clearance of vessel, including American, to foreign port:
 - (a) Less than 100 net tons.
 - (b) 100 net tons and over.
- 3 Issuing permit to foreign vessel to proceed from district to district, and receiving manifest.
- 4 Receiving manifest of foreign vessel on arrival from another district, and granting a permit to unlade.
- 5 Receiving post entry.
- 6 Receiving official bond not otherwise provided for.
- 7 Certifying payment of tonnage tax for foreign vessels only.
- 8 Furnishing copy of official document, including certified outward foreign manifest, and others not elsewhere enumerated.

The published revised fee schedule shall remain in effect throughout the following year.

(2) The fees shall be calculated in accordance with sections 19.5(b) and 24.17(d). Customs Regulations (19 CFR 19.5(b), 24.17(d)), and be based upon the amount of time the average service requires of a Customs officer in the fifth step of GS-9.

(3) The party requesting a vessel service described in paragraph (a)(1) of this section for which reimbursable overtime compensation is payable under 19 U.S.C. 267 or 19 U.S.C. 1451 and section 24.16 of

this chapter shall pay only the applicable overtime charge, and not both the overtime charge and the fee specified in the fee schedule.

(4) The revised fee schedule shall be made available to the public in Customs offices.

(5) The respective fees shall be designated in correspondence and reports by the applicable fee number.

(R.S. 251, as amended, sec. 501, 65 Stat. 290; 92 Stat. 888 (19 U.S.C. 66, 31 U.S.C. 483a, Public Law 95-410).)

[Published in the Federal Register, Jan. 18, 1980 (45 F.R. 3570)]

(T.D. 80-26)

(19 CFR Parts 10, 11, 24, 127, 132, 141, 142, 143, 144, 151, 158, 159, 172, and 173)

Customs Regulations relating to the entry of merchandise, liquidation of entries, warehousing periods, and marking of bulk containers of alcoholic beverages, amended

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule—correction.

SUMMARY: This document corrects several errors in T.D. 79-221, which amended the Customs Regulations to implement various aspects of Public Law 95-410, the "Customs Procedural Reform and Simplification Act of 1978," relating to the entry of imported merchandise, the liquidation of entries, warehousing periods, and the marking of bulk containers of alcoholic beverages.

EFFECTIVE DATE: Upon publication in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Benjamin H. Mahoney, Entry Procedures and Penalties Division, Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229; 202-566-5778.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Public Law 95-410, the "Customs Procedural Reform and Simplification Act of 1978," approved October 3, 1978, made significant changes in the Customs laws relating to the entry of imported merchandise, the liquidation of entries, warehousing periods, and the marking of bulk containers of alcoholic beverages. Final amendments to the Customs Regulations implementing these changes were pub-

lished as T.D. 79-221 in the Federal Register on August 9, 1979 (44 F.R. 46794).

This document corrects several errors in T.D. 79-221 as discussed below.

INAPPLICABILITY OF NOTICE AND DELAYED EFFECTIVE DATE PROCEDURES

Because this document is designed merely to correct errors in a previously published document amending the Customs Regulations, good cause is found for dispensing with the notice and delayed effective date provisions of 5 U.S.C. 552.

INAPPLICABILITY OF EXECUTIVE ORDER 12044

This document is not subject to the provisions of the Treasury Department directive (43 F.R. 52120) implementing Executive Order 12044, "Improving Government Regulations," because the document to which these corrections relate was in process before May 22, 1978, the effective date of the directive.

DRAFTING INFORMATION

The principal author of this document was Charles D. Ressin, Regulations and Research Division, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

CORRECTIONS

In F.R. Document 79-24494 appearing as T.D. 79-221 in volume 44 of the Federal Register at page 46794 in the issue of Thursday, August 9, 1979:

1. On page 46813, in the first column, the first cross-reference in the second sentence of section 10.31(a)(1) should read "10.36," rather than "10.35."
2. On page 46813, in the second column, the reference to the footnote at the end of section 11.6(a) should read "19 U.S.C. 467.³" rather than "19 U.S.C. 467.²".
3. On page 46813, in the third column, item 2 should read:
"2. Footnote 3 to part II is amended to read as follows:

³ The Secretary * * *

4. On page 46815, in the first column, the first sentence of section 132.13(a)(1)(ii) should read:

"(ii) *Absolute*.—Absolute quota merchandise shall not be released under the immediate delivery procedure if the quota is nearing fulfillment." * * *

5. On page 46817, in the third column, the cross-reference in the last sentence of section 141.61(e)(1)(i) should read: "* * * prescribed in paragraph (f)(2) of this section * * *".

6. On page 46821, in the second column, below "PART 142—ENTRY PROCESS," the introductory language should read: "Part 142 is revised to read as follows: * * *".

7. On page 46823, in the first line of the third column, the word "delivered" should be substituted for the word "presented" in section 142.6(b).

8. On page 46824, in the third column, the cross-reference in the second sentence of section 142.16(a) relating to the time period to file documentation with the entry summary should read: "142.12(b)" rather than "142.3".

9. On page 46826, in the third column, in section 142.23, delete the period, and add "* * * or, for quota class merchandise, within the quota period, whichever expires first.".

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624); Public Law 95-410 (October 3, 1978).)

WILLIAM T. ARCHEY,
Acting Commissioner of Customs.

Approved: January 7, 1980.

RICHARD J. DAVIS,
Assistant Secretary of the Treasury.

[Published in the Federal Register Jan. 21, 1980 (45 FR. 3901)]

(T.D. 80-27)

Foreign Currencies—Daily Rates for Countries Not on Quarterly List

Rates of exchange based on rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York for the Brazil cruzeiro, People's Republic of China yuan, Hong Kong dollar, Iran rial, Philippines peso, Singapore dollar, Thailand baht (tical) and Venezuela bolivar

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to part 159, subpart C, Customs Regulations (19 CFR 159, subpart C).

Brazil cruzeiro:

January 1, 1980.....	Holiday
January 2-7, 1980.....	\$0.0235
January 8-11, 1980.....	.0228

People's Republic of China yuan:

January 1, 1980.....	Holiday
January 2, 1980.....	\$0. 666711
January 3-11, 1980.....	. 669389

Hong Kong dollar:

January 1, 1980.....	Holiday
January 2, 1980.....	\$0. 203335
January 3, 1980.....	. 202881
January 4, 1980.....	. 203666
January 7, 1980.....	. 203004
January 8, 1980.....	. 202963
January 9, 1980.....	. 203046
January 10, 1980.....	. 203417
January 11, 1980.....	. 203978

Iran rial:

January 1, 1980.....	Holiday
January 2-11, 1980.....	Not available

Philippines peso:

January 1, 1980.....	Holiday
January 2-8, 1980.....	\$0. 1350
January 9-11, 1980.....	. 1355

Singapore dollar:

January 1, 1980.....	Holiday
January 2, 1980.....	\$0. 465766
January 3, 1980.....	. 464576
January 4, 1980.....	. 462963
January 7, 1980.....	. 463285
January 8, 1980.....	. 464037
January 9, 1980.....	. 464253
January 10, 1980.....	. 463499
January 11, 1980.....	. 463392

Thailand baht (tical):

January 1, 1980.....	Holiday
January 2-11, 1980.....	\$0. 0487

Venezuela bolivar:

January 1, 1980.....	Holiday
January 2-11, 1980.....	\$0. 2329

(LIQ-3-TRODE)

Dated: January 15, 1980.

DANIEL D. SULLIVAN
 (For G. Scott Shreve, Acting
 Director, Duty Assessment Division).

(T.D. 80-28)

Foreign Currencies—Quarterly List of Rates of Exchange

List of buying rates in U.S. dollars based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York

The table below lists rates of exchange, in U.S. dollars for certain foreign currencies, which are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York under the provisions of section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), for the information and use of Customs Officers and others concerned pursuant to part 159, subpart C, Customs Regulations (19 CFR 159, subpart C).

QUARTER BEGINNING JANUARY 1, 1980, TO MARCH 31, 1980

Country	Name of currency	U.S. dollars
Australia.....	Dollar.....	\$1.1080
Austria.....	Schilling.....	.080906
Belgium.....	Franc.....	.035881
Canada.....	Dollar.....	.857780
Denmark.....	Krone.....	.187459
Finland.....	Markka.....	.270709
France.....	Franc.....	.249066
Germany.....	Deutsche Mark.....	.583601
India.....	Rupee.....	.1250
Ireland.....	Pound.....	2.1510
Italy.....	Lira.....	.001249
Japan.....	Yen.....	.004194
Malaysia.....	Dollar.....	.459348
Mexico.....	Peso.....	.043764
Netherlands.....	Guilder.....	.528485
New Zealand.....	Dollar.....	.9850
Norway.....	Krone.....	.203625
Portugal.....	Escudo.....	.020121
Republic of South Africa.....	Rand.....	1.2090
Spain.....	Peseta.....	.015138
Sri Lanka.....	Rupee.....	.0643
Sweden.....	Krona.....	.241663

QUARTER BEGINNING JANUARY 1, 1980, TO MARCH 31, 1980—Cont.

Country	Name of currency	U.S. dollars
Switzerland.....	Franc.....	. 633914
United Kingdom.....	Pound.....	2. 2427

(LIQ-3-TRODE)

Dated: January 15, 1980.

DANIEL D. SULLIVAN
(For G. Scott, Shreve, Acting
Director, Duty Assessment Division).

Recent Unpublished Customs Service Decisions

The following listing of recent administrative decisions issued by the Office of Regulations and Rulings, U.S. Customs Service, and not otherwise published, is published for the information of Customs officers and the importing community. Although the decisions are not of sufficient general interest to warrant publication as Treasury decisions, the listing describes the issues involved and is intended to aid Customs officers and concerned members of the public in identifying matters of interest which recently have been considered by the Office of Regulations and Rulings.

A copy of any decision included in this listing, identified by its date and file number, may be obtained in a form appropriate for public distribution upon written request to the Office of Regulations and Rulings, attention: Legal Reference Area, room 2404, U.S. Customs Service, 1301 Constitution Avenue NW., Washington D.C. 20229. These copies will be made available at a cost to the requester of 10 cents per page. However, the Customs Service will waive this charge if the total number of pages copied is 10 or less.

Decisions listed in earlier issues of the CUSTOMS BULLETIN, through October 24, 1979, are available in microfiche format at a cost of \$15.10 (15 cents per sheet of fiche). It is anticipated that additions to the microfiche will be made quarterly and subscriptions are available. Requests for the microfiche now available and for subscriptions should be directed to the Legal Reference Area. Subscribers will automatically receive updates as they are issued and will be billed accordingly.

Dated: January 9, 1980.

DONALD W. LEWIS,
*Director, Office of
Regulations and Rulings.*

Date of decision	File No.	Issue
12-27-79	104240	Carrier control: Use of foreign-built, U.S.-documented crane barge to load and store cargo in U.S. port
12-20-79	104279	Vessel repair: Whether an American fish-processing vessel, operating under a certificate of registry with a restriction from engaging in the coastwise trade, is nonetheless subject to the provisions of the vessel repair statute
12-27-79	104286	Vessel repair: Whether a finding of casualty is warranted in the absence of specific evidence of the date and place of adverse weather conditions allegedly causing vessel damage
12-31-79	104386	Vessel repair: Whether the vessel repair statute is applicable to a particular undocumented military vessel
12-26-79	711467	Prohibited and restricted importations: Disposition of warehoused merchandise subject to patent exclusion order
12-21-79	711557	Prohibited and restricted importations: Switchblade knife
12-20-79	711732	Reliquidation: Time limits within which to produce a free entry document under 19 U.S.C. 1520(c)(1)
12-17-79	711916	Prohibited and restricted importations: Trademark infringement: corn starch
12-17-79	711991	Personal exemptions: Silk cocoons (812.10)
11-13-79	060728	Classification: Antibiotic (407.85, 437.32)
11-30-79	060817	Classification: Whether woven textile labels on blue jeans are ornamental

Decisions of the United States Customs Court

United States Customs Court

One Federal Plaza
New York, N. Y. 10007

Chief Judge

Edward D. Re

Judges

Paul P. Rao
Morgan Ford
Scovel Richardson
Frederick Landis

James L. Watson
Herbert N. Maletz
Bernard Newman
Nils A. Boe

Senior Judge

Samuel M. Rosenstein

Clerk

Joseph E. Lombardi

Customs Decisions

(C.D. 4835)

THE FLORSHEIM SHOE CO., DIVISION OF INTERCO, INC.;
PLAINTIFF v. UNITED STATES, DEFENDANT

Court No. 76-1-00138

Leather

Finished leather claimed to be properly subject to duty at 5 per centum ad valorem under item 121.57, Tariff Schedules of the United States, as modified by T.D. 68-9, as "Leather * * * finished: * * * Not fancy: * * * Other," held properly classified as "Leather * * * finished: * * * Other: Calf and kip" and, as such, dutiable at 9 per centum ad valorem under item 121.30, Tariff Schedules of the United States, as modified by T.D. 68-9.

The evidence is inconclusive as to the determination point of calf or kip in both weight of the hide and the amount of square feet obtained therefrom of finished leather.

Leather is commingled when it contains merchandise of two different tariff characters and is subject to the provisions of general headnote 7.

Average size of commingled merchandise may not be utilized in determining the rate of duty applicable thereto. *Robinson-Wagner Co., Inc. v. United States*, 27 Cust. Ct. 158, C.D. 1363 (1951), *aff'd*, 40 CCPA 80, C.A.D. 501 (1952).

[Judgment for defendant.]

(Decided Jan. 2, 1980)

Barnes, Richardson & Colburn (Robert E. Burke and Steven P. Sonnenberg at the trial; Thomas D. Terpstra with them on the briefs) for the plaintiff.

Alice Daniel, Assistant Attorney General; *Joseph I. Liebman*, Attorney in Charge, Field Office for Customs Litigation (*Madeline B. Kustik* at the trial and on the brief), for the defendant.

FORD, Judge: Plaintiff in this action is seeking to recover a portion of the duties paid on certain finished leather imported from France. The merchandise was classified as calf or kip leather under item 121.30, Tariff Schedules of the United States, as modified by T.D. 68-9, which provides for duty at the rate of 9 per centum ad valorem.

Plaintiff contends the leather is not calf or kip and consequently is subject to classification under item 121.57, Tariff Schedules of the United States, as modified by T.D. 68-9, which provides for duty at 5 per centum ad valorem.

The pertinent statutory provisions read as follows:

	Leather, in the rough, partly finished, or finished:	
	* * * * *	
	Other:	
	Calf and kip:	
121.30	Upper-----	9% ad val.
	* * * * *	
	Other:	
	Not Fancy:	
	* * * * *	
121.57	Other-----	5% ad val.

The record consists of the testimony of four witnesses called on behalf of plaintiff. Mr. Harry Hunt, in charge of the hides and skins department of Nick Bucher & Sons Co. of Chicago, has been in the business of curing hides since 1938. William Cartmill, executive vice president of the National Tanning & Trading Co. of Peabody, Mass.,

whose experience in the tanning industry started in 1955 when he was with A. C. Lawrence Leather Co., where he was a raw stock buyer. Mr. Joseph A. Bistany, vice president, raw material procurement, of the Florsheim Shoe Co., has been associated with that company for over 5 years. His duties include purchasing of leather. Prior to his present employment, he was vice president, operations, of Barrett & Co., a calfskin tanner in Newark, N.J. Dr. Harland H. Young was employed by Swift & Co. in Chicago from 1932 to 1970. During this period of time he did research for the company which included curing of hides. Since 1970 he has done consulting work. The witness was active in the development of the brine-curing process.

Three witnesses were called on behalf of defendant. Mr. Vlastimil J. Surak, who for the past 25 years has been in the business of tanning in Chicago, has worked in the tanning industry in the United States and Czechoslovakia for a total of 38 years. Mr. Gustav Geisel, who is self-employed dealing in hides and skins in Chicago, has been in this field for 41 years. Mr. Milton Bailey is a civilian employed by the U.S. Navy since 1952 as a physical scientist. His duties include the development of standards relating to leather footwear for the U.S. Navy. Prior to his employment by the U.S. Navy, Mr. Bailey taught leather technology at the College of the City of New York and from 1946 to 1952 he was employed in a tannery.

Ten exhibits were received in evidence on behalf of plaintiff and 10 exhibits for defendant as well as the record in *Florsheim Shoe Company, Division of Interco, Inc. v. United States*, 71 Cust. Ct. 187, C.D. 4495 (1973). The official papers were also received in evidence without being marked. The court reserved ruling on defendant's exhibit H for identification. This exhibit will be received in evidence as defendant's exhibit H as an admission against interest.

At the outset of the trial, plaintiff abandoned all entries covered by the complaint except entries 219477 and 222905. Accordingly, claims as to all entries except the above having been abandoned are dismissed.

The record establishes the production of leather requires two separate processes, to wit: Curing and tanning. According to the witnesses involved in curing, most hides are bought on a New York-trim basis. The items are then put in various packs with granulated salt or brine and remain in such condition for 30 days. The salt is used to preserve the hide by making it bacteriologically stable which prevents putrefaction. Moisture is drawn out by the salt which causes a weight loss of the hide of approximately 11 percent to 14 percent. Plaintiff's exhibit 2, a cured hide, weighed approximately 26 pounds before curing. After curing, it weighed 22½ pounds which weight the Govern-

ment has agreed to be the weight of exhibit 2. This exhibit was withdrawn and illustrative exhibit 3, a photograph of exhibit 2, was received in evidence. A green hide or a wet hide are used synonymously and refer to an uncured hide. A cured hide is one that is biologically stable and which is ready for shipment or storage. The term "green salted" applies to the pack or pit curing, using salt on green hides without washing or fleshing.

Counsel have agreed that exhibit 4 is representative of the imported merchandise. The exhibit consists of a full skin which has been tanned. Exhibit 5 is representative of the product described on the invoices as black box. Exhibits 6 and 7 represent merchandise known as smooth calf. Each piece of leather is marked with the size by the tanner which permits the purchaser to determine whether he has received the amount of leather ordered. The sizes stamped on exhibits 4, 5, 6, and 7 are $20\frac{1}{4}$ square feet, $22\frac{1}{2}$ square feet, $20\frac{1}{2}$ square feet, and $22\frac{1}{2}$ square feet, respectively.

Photocopies of the adding machine tapes contained in exhibits 8 and 9 are copies of the tapes supplied by the tanner. Each bundle or pallet of skins has the tape attached to the top skin and represents the amount of square feet contained in the bundle or pallet.

The consensus of opinion with respect to the square footage of a 25-pound skin is that it would amount to less than 20 square feet. Cured hides are sold by the pound and finished or tanned leather is sold by the square foot. Yield is the amount of square feet of finished leather obtained from a cured hide. The testimony in respect to yield is contradictory since each tanner has his own process which may yield more or less square feet per hide.

Tanning was described by plaintiff's witness, Cartmill, as requiring soaking which in effect places the material back in the green state. A depilatory or hair remover is utilized to remove the hair from the skin. It is then baked, pickled, and tanned. After tanning, it is wrung out on a machine to eliminate some of the moisture. It is next shaved on the flesh side and is graded and colored. The material is subsequently dried by one of three methods. After drying, it is stacked to soften it into a more natural pliable form for finishing. The witness indicated that finishing a piece of leather is like finishing a piece of fine wood. The tanner might use one, two, three, or four coats. It is glazed by utilizing heat and friction to polish the skin. After completion of this process, it is trimmed and graded and packed for shipment.

The basic issue presented for determination is the cutoff point in weight of the hides and the square footage of the finished leather. Plaintiff contends the weight of 25 pounds or less is the recognized point as judicially determined in *Josaf Haberman v. United States*, T.D. 18739, G.A. 4052 (1897) and *Jos. Hecht & Sons v. United States*,

T.D. 19716, G.A. 4215 (1898). In the latter case, the findings of fact were as follows:

(1) That the goods were all imported under the present tariff act of 1897, being assessed for duty under paragraph 437 of said act as "hides of cattle."

(2) That the raw skins all weigh less than 25 pounds each, and are in fact raw calfskins, and were so commercially known in the trade of this country on and before July 24, 1897.

(3) That the dry skins all weigh less than 12 pounds each.

(4) That commercially the dividing line between raw cowhides and calfskins, in *weight*, is 25 pounds, the term "calfskins" including all so-called hides or skins which weigh less than 25 pounds. When *dry*, the dividing line is 12 pounds, all weighing less than 12 pounds being commercially known as skins, and all weighing 12 pounds or over as hides.

It is noted in the decision of the *Hecht* case that "[s]uch distinction has been recognized in the tariff legislation of Congress for more than 40 years."

With respect to the question of weight, while the testimony of plaintiff's witnesses and defendant's witness Surak agreed the 25-pounds-or-under designation applied to kip, defendant's witness Geisel considered a weight of 30 pounds to be kip. Bailey agreed to the 30-pound figure and his later testimony expanded the weight to 35 pounds for kip. This testimony of defendant's witnesses Geisel and Bailey appears to be based on their experience and the definitions contained in the ASTM designation D 1517-67, which was promulgated in 1967 and received in evidence as defendant's exhibit F, as well as defendant's exhibit I, the "Federal Test Method Standard," dated 1969. Defendant's exhibit E entitled "Military Standard Visual Inspection Guide for Footwear Upper Leather" (MIL-STD-663B), which was issued in 1971, indicates the square footage of calf and kip leather. Defendant, therefore, contends the weight and square footage has increased over the years and the importations are dutiable as classified.

It is to be noted that there is a difference of opinion as to the determination point of weight, as well as a lack of unanimity of opinion as to whether 20 square feet is the determination point for finished leather. This is due to the fact that the weight determination point according to the evidence may vary from under 25 to 35 pounds, thus resulting in various yields of square footage of the finished leather. In addition, the testimony with respect to tanning does not give a specific formula which may be utilized in determining the yield of the square footage of leather from the weight of the hide. The record further indicates that tanners utilize their own processes which may result in a yield of more or less square footage based upon the same weight.

Plaintiff further contends such distinction is presently recognized in the trade and that it has established a commercial designation. Where words used in tariff acts to designate particular kinds or classes of goods have well-known significance in the trade and commerce which differ from the common meaning, the commercial meaning prevails. *Maddock v. Magone*, 152 U.S. 368 (1894); *Jas. Akeroyd & Co. et al. v. United States*, 15 Ct. Cust. Appls. 440, T.D. 42641 (1928). Proof of commercial designation is a question of fact to be established in each case. *Daniel Green Shoe Co. v. United States (Trans World Shoe Corp., Party in Interest)*, 58 Cust. Ct. 7, C.D. 2868, 262 F. Supp. 375 (1967), *appeal dismissed*, 54 CCPA 143. The record before the court fails to establish a commercial designation. It is incumbent upon the party alleging commercial designation to establish that such designation was definite, general, and uniform throughout the United States on or about the date of the enactment of the tariff legislation involved. *United States v. Armand Schwab & Co., Inc., et al.*, 30 CCPA 72, C.A.D. 218 (1942).

The second matter for determination is whether the imported leather, which arrived in bundles or pallets and contained leather both over and under 20 square feet, should be considered as claimed based upon the average size of the leather contained in the bundle or pallet. Plaintiff contends the average size of the leather contained in each bundle should be utilized since leather is dealt with in the trade based upon an average. Plaintiff also brings to the court's attention that the testimony relating to weight for calf or kip was given in a range of weight in which the witnesses indicated an average weight.

Defendant takes the position that merchandise which contains various sizes, over and under 20 square feet, is commingled. According to general headnote 7 of the Tariff Schedules of the United States, commingled merchandise is subject to the highest rate of duty applicable to such merchandise unless the merchandise is segregated. The pertinent portions of general headnote 7 provide as follows:

7. *Commingling of articles.*—(a) Whenever articles subject to different rates of duty are so packed together or mingled that the quantity or value of each class of articles cannot be readily ascertained by customs officers (without physical segregation of the shipment or the contents of any entire package thereof), by one or more of the following means:

- (i) sampling,
- (ii) verification of packing lists or other documents filed at the time of entry, or
- (iii) evidence showing performance of commercial settlement tests generally accepted in the trade and filed in such time and manner as may be prescribed by regulations of the Secretary of the Treasury,

the commingled articles shall be subject to the highest rate of duty applicable to any part thereof unless the consignee or his agent segregates the articles pursuant to subdivision (b) hereof.

Assuming *arguendo* that the determination point in weight was 25 pounds or less and the square footage point was 20 square feet or less, since the merchandise contains under and over 20 square feet it is for tariff purposes commingled. It is further apparent that there has been no segregation of the merchandise and, therefore, it is dutiable at the highest rate applicable to the merchandise as prescribed by general headnote 7.

The question of utilizing averages was considered in *Robinson-Wagner Co., Inc. v. United States*, 40 CCPA 80, C.A.D. 501 (1952). In the *Robinson* case, certain wool grease was classified as wool grease suitable for medicinal use. The merchandise was imported in drums, some of which was of one tariff character, as classified, and some of another tariff character, wool grease containing 2 percent or less of free fatty acids and not suitable for medicinal use. The court in considering the question of average samples made the following observations:

It will be remembered that the merchandise was imported in drums and from the record it is reasonable to believe that the contents of the individual drums differ in their chemical composition.

It seems to us, as was argued by counsel for the Government, that if a drum of grease, such as was sampled by the Customs officials, were to be mixed with one or any number of drums containing less than the components and character of adeps lanae, the result of such composite sample would probably in some degree conform to the samples and analyses made by employees of appellant in their tests. Therefore, we agree with the reasoning in the decision of the trial court that the composite sample representing an average, must be of lesser quality than the contents of the drums which held the better quality of the shipment.

The Customs Court in its decision in the *Robinson* case, 27 Cust. Ct. 158, C.D. 1363 (1951), made the following pertinent observation which likewise applies to general headnote 7:

We are not unmindful of the fact that the plaintiff may have ordered and expected to receive wool grease not suitable for medicinal use, and that the average of the entire shipment actually was just such wool grease. The fact is, however, that the shipment was packed in drums, and the evidence establishes that some of the drums contained wool grease of the highest class. The policy of the law in such cases is indicated by section 508 (Tariff Act of 1930), *supra*, and is to assess duty, not upon the average of the classes of merchandise in a shipment, but upon

the highest class thereof if the classes involved can be segregated and the segregation is not done.

Accordingly, in the absence of segregation, the merchandise was properly classified.

Judgment will be issued accordingly.

(C.D. 4836)

SOUTHERN AIR TRANSPORT, INC., PLAINTIFF *v.* UNITED STATES,
DEFENDANT

Court No. 75-6-01590

Transportation Equipment (DC-6B Airplane)

AMERICAN GOODS RETURNED—CUSTOMS REGULATIONS—NON-COMPLIANCE

A Douglas DC-6B airplane imported at Miami, Fla., from Taiwan and classified in liquidation as entered under TSUS item 694.40 as a *used* or rebuilt airplane, *Heid*, not classifiable as claimed under TSUS item 800.00 as a *product* of the United States or under TSUS item 807.00 as an *article assembled* with U.S. components where the importer failed to plead and prove compliance with or waiver of applicable Customs Regulations associated with duty-exempt entries, and the evidence establishes that the aircraft would not qualify for duty exemption by reason of modifications made abroad which increased its value, and by reason of the absence of *assembly abroad*.

[Dismissed.]

(Decided Jan. 4, 1980)

Howard, Poe & Bastian (James H. Bastian at the trial and on the brief) for the plaintiff.

Alice Daniel, Assistant Attorney General; *Joseph I. Liebman*, Attorney in Charge, Field Office for Customs Litigation (*Sidney N. Weiss* at the trial and on the brief), for the defendant.

RICHARDSON, Judge: This action involves the dutiable status of a Douglas DC-6B airplane bearing manufacturer's serial No. 44550 and U.S. Federal Aviation Administration registration No. N93459. The plane was imported at Miami, Fla., from Taiwan on October 1, 1973, and entered and classified in liquidation as a *used* or *rebuilt* airplane under TSUS item 694.40 at the duty rate of 5 *per centum ad valorem*. Plaintiff-importer claims that the aircraft should be classified under TSUS item 800.00 as a *product* of the United States not advanced in value or improved in condition, duty free, or, in the alternative, under TSUS item 807.00 as an *article assembled* abroad with U.S. components, with duty assessed only on the value of foreign labor.

The operative facts in the case are not in dispute. The record shows that the plane was purchased new from the Douglas Aircraft Co., Inc., in 1958 by Asiatic Aeronautical Co., Ltd. (AACL), later known as Air Asia Co., Ltd., for \$1.6 million, and immediately exported to Taiwan, Republic of China, for use in the operation of a scheduled airline service of which AACL was part owner. For some 15 years the plane was operated as a combination passenger-light cargo aircraft in the Far East. In August 1973, the plane was acquired by plaintiff by purchase from Air America, Inc., the parent corporation of AACL, for \$134,500. Plaintiff then expended some \$44,611.50 in labor and material costs to have work performed on the plane in Taiwan, after which the plane was returned to the United States where it was entered as aforesaid.

Some of the work performed in Taiwan on the plane prior to importation entailed replacement of main cabin flooring with stronger flooring, replacement of fore and aft passenger doors in the main cabin with larger cargo doors which necessitated opening and modifying the fuselage to accommodate the larger doors, the removal of the overhead passenger hatrack in the main cabin, the removal of two toilets and a coatroom in the forward main cabin, the substitution of a bucket-type, portable toilet in the rear main cabin for the more sophisticated toilet originally installed there, and the substitution of a movable galley for the stationary galley and tray container storage area originally built into the main cabin.

The object of these modifications was said to be the preparation of the plane for a combination cargo-passenger service stateside with emphasis, insofar as cargo carrying capacity is concerned, on the carriage of larger, bulkier cargo on the main deck within existing payload limits. The modifications resulted in a reduction of the aircraft's passenger capacity from a 73-seat configuration to a 27-seat configuration.

The factual underpinnings in the case are amply covered by allegations in plaintiff's pleading. Noticeably absent from the amended complaint, however, is any reference to compliance with requisite Customs Regulations relative to item 800.00 or 807.00 entry. On the other hand, defendant alleged in an affirmative defense in its answer the fact of plaintiff's noncompliance with applicable Customs Regulations relating to an item 800.00 or 807.00 entry. And, at the conclusion of plaintiff's case, defendant moved to dismiss the action for "failure to state a prima facie case" (r. 89). The court reserved decision on the motion.

In its brief, plaintiff does not address itself to the matter of compliance with applicable Customs Regulations. And on this phase of the

case, defendant argues in its brief that compliance with appropriate Customs Regulations is a condition precedent to recovery under items 800.00 and 807.00, and asserts that plaintiff has not complied with the regulations. The court agrees with defendant.

Exemption from duty on imported merchandise in whole or in part is not absolute under the TSUS. Such an exemption is conditioned upon compliance with applicable Customs Regulations (general headnote 11, TSUS; headnote 1, schedule 8, TSUS; secs. 10.1 and 10.2 of the Customs Regulations (19 CFR secs. 10.1, 10.2)), unless compliance has been waived by the appropriate Customs official. Section 10.1 requires the filing of (1) a foreign shipper's declaration, (2) an owner's declaration on Customs form 3311, and (3) a district director's certificate of exportation on Customs form 3311, in connection with an item 800.00 entry. And section 10.2 requires the filing of (1) a foreign assembler's declaration, and (2) an owner's endorsement on the assembler's declaration, in connection with an item 807.00 entry. See *Maple Leaf Petroleum, Ltd. v. United States*, 25 CCPA 5, T.D. 48976 (1937). In the instant case, plaintiff neither pleaded nor proved compliance with or waiver of the documentary requirements of either section 10.1 or section 10.2 of the Customs Regulations. Plaintiff has not even addressed itself to the issue of regulatory compliance raised in defendant's affirmative defense, and also, by implication, on the motion to dismiss.

In fact, plaintiff has, in effect, undertaken to *bypass* the regulatory compliance issue when it made a *dutiable* entry of the aircraft. Cf. *McDonnell Douglas Corp. v. United States*, 75 Cust. Ct. 6, 13-14, C.D. 4604 (1975), *decided on rehearing*, 78 Cust. Ct. 92, C.D. 4692 (1977). However, plaintiff cannot properly assert its claim for duty exemption on the aircraft for the first time in court, absent a late filing of the requisite documents. See *Mattel, Inc. v. United States*, 82 Cust. Ct. 234, C.D. 4805 (1979), *appeals appending*, where there was an obligation to assert it initially at the administrative level. As our appellate court said in *Maple Leaf Petroleum, Ltd.*, *supra*, at page 9, "The party asking the special grant or favor (duty exemption), of course, would be required to make a showing of the essential facts required by the regulation to the collector at the time of entry and not in the way of evidence at some subsequent trial."

But even if the exemption supporting documents had been filed with the district director initially under an item 800.00 or 807.00 entry in accordance with the regulations, or their filing waived by the district director as he is now empowered to do under these regulations (see sec. 10.1 (d) and (g) of the Customs Regulations (19 CFR sec.

10.1 (d) and (g)), or subsequently filed with the court by leave of court under the late filing of documents provision, the court would be disinclined, as a matter of law, to accord the aircraft the duty exemption now sought by plaintiff here, given the facts of record concerning the extensive work performed on the aircraft in Taiwan prior to its departure for the United States on the voyage of importation.

Discounting the fact that the installation of cargo window bars in the main cabin of the plane was an item wholly of *foreign manufacture*, the contracting parties themselves regarded the installation of cargo doors and heavy flooring in the main cabin to be items of major importance. Thus, the contract read as to such items: "Such materials and drawings must meet USFAA standards for major alterations being accomplished in accordance with previously approved data (STC's)." And, although it is true that the aircraft possessed only residual value at the time of these alterations, and, further, that a number of facilities built into the aircraft for passenger convenience and comfort were simultaneously removed, i.e., galley and tray container storage, hatracks, toilets, and coathroom, the alterations, nevertheless, resulted in a change in condition which increased its residual value in the court's opinion.

The realities of the marketplace force the conclusion that the days for commercial passenger service for this vintage piston-engine, propeller-driven airplane were numbered even at the time of its acquisition by plaintiff. In the Far East, the plane had already been replaced in regularly scheduled commercial flights by a newer, larger aircraft, thus relegating it to unscheduled (supplemental) flights or charter service. Now, destined for service stateside after some 15 years of service abroad, the plane faced an even bleaker future here in competition for passenger service with jet aircraft in a jet-age, technology-oriented society. Hence, against this almost certain future, the alterations performed on the plane in Taiwan prior to its departure for the United States must be viewed as equipping it to perform a more useful cargo service here which was calculated to increase its earning capacity, and thereby postpone obsolescence. Obviously, therefore, the refurbished airplane had increased value which would disqualify it for item 800.00 treatment notwithstanding its domestic origin.

And neither would the aircraft qualify for item 807.00 treatment since it was never an *assembled article* within the meaning of that provision. From the time of its manufacture until it underwent modification in Taiwan the plane remained a complete and functional article of commerce. At best, only some of its existing parts and components, i.e., flooring and doors, were removed and replaced while

the plane was abroad. However, the plane itself was never *assembled* abroad from *fabricated components* of U.S. origin.

For the reasons stated, defendant's motion to dismiss is granted. Judgment will be entered herein accordingly.

Abstracts *Abstracted Protest Decision*

DEPARTMENT OF THE TREASURY, *January 7, 1980.*

The following abstracts of decisions of the United States Customs Court at New York are published for the information and guidance of officers of the customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to customs officials in easily locating cases and tracing important facts.

ROBERT E. CHASEN,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ORIGIN AND MERCHANDISE
P80/1	Maletz, J. January 3, 1980	Shayne Knitwear, Inc.	75-7-01894	Item 772.30 12.5% (jackets) Item 382.78 2 3/4 per lb. + 32.5% (blouses and pants)	Item 772.30 12.5% Dutiable as entireties on basis of export value; said value is invoice unit price	J. C. Penny Purchasing Corporation v. U.S. (C.D. 4671)	New York Ladies 2-piece suits; en- tireties

CUSTOMS COURT

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED		HELD		BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate	Par. or Item No. and Rate	Par. or Item No. and Rate		
P80/2	Maletz, J. January 3, 1980	Shayne Knitwear, Inc.	75-7-01904	Item 382.58 37.5¢ per lb. + 20% (blouses, pants and dresses) Item 772.30 12.5% (jackets)	Item 772.30 Dutiable as entireties on basis of export value; said value is invoice unit price	Item 772.30 12.5% Dutiable as entireties on basis of export value; said value is invoice unit price	Item 772.30 12.5% Dutiable as entireties on basis of export value; said value is invoice unit price	J. C. Penny Purchasing Corporation v. U.S. (C.D. 4671)	New York Ladies 2-, 3-piece suits entireties
P80/3	Maletz, J. January 3, 1980	Shayne Knitwear, Inc.	76-1-00203	Item 772.30 12.5% (vests) Item 382.58 37.5¢ per lb. + 20% (blouses) Item 382.78 25¢ per lb. + 32.5% (pants)	Item 772.30 Dutiable as entireties on basis of export value; said value is invoice unit price	Item 772.30 12.5% Dutiable as entireties on basis of export value; said value is invoice unit price	Item 772.30 12.5% Dutiable as entireties on basis of export value; said value is invoice unit price	J. C. Penny Purchasing Corporation v. U.S. (C.D. 4671)	New York Ladies 3-piece suits; en- tireties
P80/4	Maletz, J. January 3, 1980	Shayne Knitwear, Inc.	76-9-02170	Item 791.75 6% (jackets) Item 382.78 25¢ per lb. + 32.5% (shirts) Item 382.58 37.5¢ per lb. + 20% (pants)	Item 791.75 6% Dutiable as entireties on basis of export value; said value is appraised value	Item 791.75 6% Dutiable as entireties on basis of export value; said value is appraised value	Item 791.75 6% Dutiable as entireties on basis of export value; said value is appraised value	J. C. Penny Purchasing Corporation v. U.S. (C.D. 4671)	New York Ladies 3-piece suits; en- tireties

P80/5	Maletz, J. January 4, 1980	Shayne Knitwear, Inc.	75-9-02421, etc.	<p>Item 382.54 or 382.58 37.5¢ per lb. + 30%; or 37.5¢ per lb. + 20% (pants, blouses and dresses)</p> <p>Item 772.30 12.5% (jackets and skirts)</p>	<p>Item 772.30 12.5% Dutiable as entreties on basis of export value; said value is invoice unit price</p>	J. C. Penney Purchasing Corporation v. U.S. (C.D. 4671)	New York Ladies 2, 3-piece suits; entreties
P80/6	Maletz, J. January 4, 1980	Shayne Knitwear, Inc.	77-1-00111	<p>Item 772.30 12.5% (jackets and pants)</p> <p>Item 382.58 37.5¢ per lb. + 20% (vests)</p> <p>Item 382.81 25¢ per lb. + 27.5% (shirts)</p>	<p>Item 772.30 12.5% Dutiable as entreties on basis of export value; said value is invoice unit price</p>	J. C. Penney Purchasing Corporation v. U.S. (C.D. 4671)	New York Ladies sets and suits; entreties
P80/7	Maletz, J. January 4, 1980	Shayne Knitwear, Inc.	77-4-00971	<p>Item 772.30 12.5% (jackets)</p> <p>Item 382.58 37.5¢ per lb. + 20% (pull-overs)</p>	<p>Item 772.30 12.5% Dutiable as entreties on basis of export value; said value is invoice unit price</p>	J. C. Penney Purchasing Corporation v. U.S. (C.D. 4671)	New York Ladies sets; entreties

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED		HELD		BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate	Par. or Item No. and Rate	Par. or Item No. and Rate		
P80/8	Maletz, J. January 4, 1980	Shayne Knitwear, Inc.	77-7-01353	Item 772.30 12.5% (jackets, skirts, vests and pants) Item 382.58 or 382.54 37.5¢ per lb. + 20%; or 37.5¢ per lb. + 30% (pullovers)	Item 772.30 Dutiable as en- tireties on basis of export value; said value is invoice unit price	Item 772.30 12.5% Dutiable as en- tireties on basis of export value; said value is invoice unit price		J. C. Penney Purchasing Corporation v. U.S. (C.D. 4671)	New York Ladies sets; entireties
P80/9	Maletz, J. January 4, 1980	Shayne Knitwear, Inc.	77-7-01354, etc.	Item 772.30 12.5% (skirts) Item 382.51 2¢ per lb. + 27.5% (blouses and scarves)	Item 772.30 Dutiable as en- tireties on basis of export value; said value is in- voice unit price	Item 772.30 12.5% Dutiable as en- tireties on basis of export value; said value is in- voice unit price		J. C. Penney Purchasing Corporation v. U.S. (C.D. 4671)	New York Ladies sets; entireties

Decisions of the United States Customs Court

Abstracts *Abstracted Reappraisal Decision*

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R80/1	Re, C. J. January 3, 1980	American Express Company, a/c Bus & Truck Supply Company, et al.	R60/2278, etc.	Constructed value	\$19,273.20, plus value de- termined on appraise- ment of components furnished to Bus and Car Co. without charge by Western Sales, Ltd., less amount of any dam- age allowed in ap- praisal, plus or minus any adjust- ments made on ap- praisal for com- ponents or parts added to or omitted from a particular ship- ment, and less value of components of U.S. origin	Agreed facts statement of	New Orleans Inter-city passenger buses

Appeal to U.S. Court of Customs and Patent Appeals

Appeal 80-9.—Westway Trading Corp. v. United States.—

RAW SUGER—EXEMPTION FROM INCREASED DUTY—DATE OF EXPORTATION—PRESIDENTIAL PROCLAMATION—SUMMARY JUDGMENT. Appeal from C.D. 4826.

In this case, plaintiff-appellant contests the duty imposed pursuant to item 155.20, Tariff Schedules of the United States, as modified by Presidential Proclamation 4463, on merchandise consisting of approximately 7,000 long tons of raw sugar exported from Peru and entered at the Port of Baltimore, Md., on November 2, 1976. The sugar was laden at the Port of Salaverry, Peru, on September 16-17, 1976. The vessel departed Salaverry on September 18 and proceeded to the Port of Pimentel, Peru, where additional sugar was laden. The vessel left Pimentel for the United States on October 5, 1976. Presidential Proclamation 4463 issued on September 21, 1976, increased the duty on sugar imported under item 155.20. Proclamation 4463 was modified by Presidential Proclamation 4466 on October 4, 1976, and provided that the provisions of Proclamation 4463 “* * * shall not be effective with respect to articles exported to the United States before 12:01 a.m. * * *, September 21, 1976, provided that such articles are entered or withdrawn from warehouse, for consumption on or before November 8, 1976.”

Plaintiff claims that the departure of the vessel from Salaverry as distinguished from its subsequent departure from Pimentel constitutes the “date of exportation” to the United States as allegedly intended by Presidential Proclamation 4466 and, therefore, the sugar laden at Salaverry is exempt from any increased duty. Plaintiff predicates its claim upon a regulation and guideline issued on September 3, 1971, by the Commissioner of Customs to Regional Commissioners and District Directors of Customs providing: “Where goods are exported from the country of exportation by vessel, and where the vessel lades merchandise at two or more ports within that country, the date of exportation for each of the shipments shall be the date upon which the shipment left the port at which it was laden.” This instruction was given in relation to language contained in additional duty order No. 3 is-

sued by the Secretary of the Treasury in delineating exemptions from the surtax assessed in Presidential Proclamation 4074. The language contained in order No. 3 was similar to that contained in Proclamation 4466.

The Customs Court found that it cannot be presumed that the President in promulgating Proclamation No. 4466 intended the language thereof to be interpreted in conformity with the regulations and instructions of the Commissioner of Customs under date of September 3, 1971; that the date of exportation is the time the merchandise actually leaves the country of exportation for the United States (19 CFR 152.1(c) 1976); and that plaintiff failed to rebut the presumption of correctness attaching to the determination of the District Director of Customs in the assessment of duty on the merchandise in question. Plaintiff's motion for summary judgment was denied; defendant's cross-motion for summary judgment was granted.

It is claimed that the Customs Court erred in granting defendant's cross-motion for summary judgment and denying plaintiff's motion for summary judgment; in failing to find that the President intended the language in Presidential Proclamation 4466 to have the same meaning as the same language under Presidential Proclamation 4074; in finding and holding contrary to law, contrary to well-established rules of statutory construction, and contrary to the intent of the law giver; and in not denying defendant's cross-motion for summary judgment, although finding an absence of explanatory guidance in the proceedings before the court.

International Trade Commission Notices

Investigations by the U.S. International Trade Commission

DEPARTMENT OF THE TREASURY

The appended notices relating to investigations by the U.S. International Trade Commission are published for the information of Customs officers and others concerned.

R. E. CHASEN,
Commissioner of Customs.

In the Matter of CERTAIN APPARATUS FOR THE CON- TINUOUS PRODUCTION OF COP- PER ROD	}	Investigation No. 337-TA-52
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*Notice of Request for an Advisory Opinion in Certain Apparatus for the
Continuous Production of Copper Rod*

On December 17, 1979, the U.S. International Trade Commission received a request from counsel for the Krupp respondents in the above-captioned case for an advisory opinion on certain aspects of the three cease and desist orders issued by the Commission on November 23, 1979, in conjunction with the final determination in investigation No. 337-TA-52. A copy of Krupp's December 17 letter, with confidential portions excised, has been placed in the public inspection file of the Commission.

The Commission believes that the issuance of any advisory opinion must fully take into account the public interest. The Commission therefore will allow 20 days from the date of issuance of this notice for members of the public to file written objections or comments regarding the advisory opinion requested. Such objections or comments shall be placed on the public record except for information for which confidentiality has been requested, with a showing of justification therefor, and

which the Commission with due regard to statutory restrictions, its rules, and the public interest has determined should not be made public. For the purposes of obtaining such comments or objections which are confidential, the protective order issued May 23, 1978, in connection with investigation No. 337-TA-52 shall continue in effect.

Upon receipt of any public comments and objections the Commission will determine if an advisory opinion is appropriate. The Commission will publish the contents of any such advisory opinion or reasons why such an advisory opinion would not be appropriate.

By order of the Commission.

Issued: January 4, 1980.

KENNETH R. MASON,
Secretary.

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Bus seats	80-23-B
Plastic color concentrates (pellet form)	80-23-C
Flavorings	80-23-D
Steel sheets, strips, and blanks	80-23-E
Armored cars, turrets	80-23-F
Cars, passenger, trucks, parts, etc	80-23-G
Barbecue grills, electric	80-23-H
Diesel generator sets/systems and diesel power units	80-23-I
Dyes—Sevron yellow	80-23-J
Pressure vessels, and acid process systems	80-23-K
Photocopier assemblies	80-23-L
Leather, pigment-colored and surface-textured	80-23-M
Thiamine hydrochloride and thiamine mononitrate	80-23-N
Visitronic auto/focus modules for cameras	80-23-O
Alco-sensors	80-23-P
Cranes, excavators, compactors, and stabilizers, light construction equipment	80-23-Q
Loaders, L-800 letro	80-23-R
Amino-carbinol, amitriptyline, cypro carbinol, and cypro heptadine	80-23-S
Vanadium pentoxide powder, fused metallurgical grade	80-23-T
Generator sets, diesel and gas	80-23-U
Piece goods, silk	80-23-V
Feeders, electronic cow	80-23-W
Paint sprayers, portable	80-23-X
Rescue vehicles, fire	80-23-Y
Turbine blades, steam	80-23-Z

Customs Court

- Appeal to U.S. Court of Customs and Patent Appeals (p. —);
 - Appeal 80-9—Raw sugar; exemption from increased duty; date of exportation; Presidential proclamation; summary judgment
- Airplane, used or rebuilt, C.D. 4836
- American goods returned; customs regulations, noncompliance with, C.D. 4836
- Calf or kid leather, C.D. 4835
- Commercial designation; proof, C.D. 4835
- Commingled:
 - Leather, C.D. 4835
 - Merchandise, average size of; rate of duty, C.D. 4835
- Commingling of articles; TSUS, General Headnote 7, C.D. 4835
- Common meaning v. commercial designation, C.D. 4835
- Construction:
 - Code of Federal Regulations, title 19:
 - Sec. 10.1, C.D. 4836
 - Sec. 10.1(d), C.D. 4836
 - Sec. 10.1(g), C.D. 4836
 - Sec. 10.2, C.D. 4836
 - Customs Regulations:
 - Sec. 10.1, C.D. 4836
 - Sec. 10.1(d), C.D. 4836
 - Sec. 10.1(g), C.D. 4836
 - Sec. 10.2, C.D. 4836
 - Tariff Schedules of the United States:
 - General Headnotes and Rules of Interpretation:
 - Headnote 7, C.D. 4835
 - Headnote 11, C.D. 4836
 - Item 121.30, C.D. 4835
 - Item 121.57, C.D. 4835
 - Item 694.40, C.D. 4836
 - Item 800.00, C.D. 4836
 - Item 807.00 C.D. 4836
 - Schedule 8, headnote 1, C.D. 4836
- Customs Regulations, noncompliance with; American goods returned, C.D. 4836
- Douglas DC-6B airplane, C.D. 4836
- Finished leather; Leather * * * finished: * * * Other: Calf and kip, C.D. 4835
- Leather:
 - Calf or kip, C.D. 4835
 - Commingled, C.D. 4835
- Leather * * * finished: * * *:
 - Not fancy: * * * Other, C.D. 4835
 - Other: Calf and kip; finished leather, C.D. 4835
- Proof; commercial designation, C.D. 4835
- Rate of duty; commingled merchandise, average size of C.D. 4835
- TSUS, General Headnote 7; commingling of articles, C.D. 4835
- Transportation equipment (DC-6B Airplane); used or rebuilt airplane, C.D. 4836
- Used or rebuilt airplane; transportation equipment (DC-6B Airplane), C.D. 4836

1. *Chrysomelidae* (Coleoptera)

2. *Curculionidae* (Coleoptera)

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28. *Curculionidae* (Coleoptera)

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